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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re B.S., a Person Coming Under the  
Juvenile Court Law.

B221403  
(Los Angeles County Super. Ct.  
No. CK12488)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KARL S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Terry Truong, Juvenile Court Referee. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

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Karl S. (father) appeals from the judgment of February 18, 2010,<sup>1</sup> declaring his daughter, B., a dependent of the court under Welfare and Institutions Code section 300.<sup>2</sup> He contends substantial evidence does not support the jurisdictional findings under section 300, subdivision (b), that he failed to protect B. from mother's substance abuse and his history of substance abuse and unresolved mental and emotional problems placed B. at risk of harm. We hold substantial evidence supports the findings. Accordingly, we affirm the judgment.

### STATEMENT OF FACTS AND PROCEDURE

Born to Suzette R. (mother) and father in October 2009,<sup>3</sup> B. was detained from parental custody shortly after birth, because she was born with cocaine in her system. Mother had a long history of alcohol, cocaine, and opiate abuse and failed rehabilitation efforts.<sup>4</sup> She used drugs and drank alcohol during the pregnancy and had minimal

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<sup>1</sup> Father filed two notices of appeal by counsel, one on January 5, 2010, and a second on March 2, 2010. In both notices, father appealed only from the findings of January 5, 2010, sustaining the allegations of the petition, which is not an appealable order. (See, e.g., *In re Megan B.* (1991) 235 Cal.App.3d 942, 950.) Jurisdictional findings may be reviewed in an appeal of the dispositional judgment. (*Ibid.*) Father has not requested that his notice of appeal be amended or that we construe the notice to be an appeal from the judgment. We will liberally construe the notice of appeal to be from the dispositional order to provide for appellate review of father's contention. (See Cal. Rules of Court, rule 8.405(a)(3) (July 1, 2010) ["[t]he notice of appeal must be liberally construed[]"]; *In re Joshua S.* (2007) 41 Cal.4th 261, 272.) Respondent has not objected to appellate jurisdiction, nor has respondent argued that it has been misled or prejudiced.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>3</sup> The dependency court found father to be B.'s presumed father.

<sup>4</sup> Between 1994 and 2002, mother's older nine children were made dependents of the court because of mother's drug and alcohol abuse. Mother failed to rehabilitate herself, and the children were placed in permanent plans of guardianship or adoption.

prenatal care. Having been in a relationship with her for the previous 11 years, father was aware of mother's substance abuse history. Father took mother to a clinic to verify this pregnancy when she was in the fourth month, but he did not confirm that she obtained prenatal care thereafter.

Father had a long and extensive drug history, including abuse of heroin, cocaine, and marijuana. He had an extensive criminal history. He was convicted of passing nonsufficient fund checks, pandering, disorderly conduct/drugs, receiving stolen property, burglary, transportation/sell narcotics, jail escape while charged with felony, narcotics possession, theft, driving with a suspended license, and reckless driving. Between 1980 and 2009, he received sentences of incarceration in jail or state prison of up to four years. After 2000, he was convicted of theft (2001), petty theft with a prior (2003), driving with a suspended license (2004), and reckless driving (2004). In 2006, he had warrants for theft and failure to appear.<sup>5</sup> In 2009, he was arrested for traffic violations. Father stated he spent six days in jail.

Father also had a history of mental and emotional problems. A combat veteran of the Vietnam War, father was diagnosed in 1995 with bipolar disorder/post-traumatic stress disorder. From 1998 to 1999, father received treatment from the Veterans' Administration for bipolar disorder, poly-substance dependence, depression, and post-traumatic stress disorder. He experienced "flashbacks, dreams, lapses in memory, anxious[ness,] and depressed mood[]" after a month without his medication. He was prescribed Depakote, Trazadine, and Klonopin. He stopped accepting services from the Veteran's Administration but returned in October 2000 reporting depression and requesting more Klonopin as a sleep aid. After a few months, he again stopped participating in these services. Father did not access mental health services after 2001.

B. is father's second child with mother. Their first child, Destiny, was born in 2001 with cocaine in her system. She was made a court dependent in 2001. The dependency court found that Destiny was placed at risk of harm by father's mental illness

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<sup>5</sup> The disposition is not indicated in the record.

of post-traumatic stress disorder, substance abuse, and periods of incarceration for possession of illegal substances. Father was ordered to participate in a reunification plan to address his case issues, but he did not comply. Parental rights were terminated in 2002. Destiny was adopted in 2004 by paternal grandmother, and dependency court jurisdiction was terminated. Father took custody of Destiny in October 2005 when paternal grandmother died. However, he used cocaine in late 2005 while caring for Destiny. In December 2005, dependency jurisdiction was reinstated.<sup>6</sup>

On October 15, 2009, the dependency court ordered monitored visits with B. During a visit on December 2, 2009, father became frustrated with B.'s crying. He told B., "shut up sh&%,," and ordered mother to make B. be quiet.

Father claimed he was not aware mother used drugs during the pregnancy, even though he saw her several times per week. He stated he knew mother had a history of drug use. He stated he completed a drug program in 2005 during Destiny's second dependency case, but did not submit documentation of completion. He stated he last used marijuana in 2008, last used cocaine in 2005, and currently drank occasionally. Father stated he had been hospitalized three or four times for post-traumatic stress disorder. When he had a flashback, he believed he was back in combat in Vietnam. His most recent flashback occurred in 2004 or 2005. During that flashback, he discharged a weapon. Thereafter, he received no treatment and took no medication for the disorder. In December 2009, he enrolled in a veterans' post-traumatic stress disorder discussion group, not because he was in need of treatment, but because the dependency court wanted him to.

On January 5, 2010, B. was declared a dependent of the court based, in part, on sustained allegations under section 300, subdivision (b), that: (1) father "failed to take action to protect the child when he knew of the mother's substance abuse"; (2) father has a history of substance abuse and incarceration due to criminal convictions, Destiny was a

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<sup>6</sup> Jurisdiction over Destiny was terminated in 2008 when maternal grandmother became her legal guardian.

prior court dependent due to father's history of substance abuse and substance abuse-related criminal history, and father failed to complete court-ordered services; and (3) father has an unresolved history of mental and emotional problems, Destiny was a former dependent due to father's mental health issues, and father failed to comply with court-ordered services. The dependency court did not find credible father's denial of awareness mother used drugs during the pregnancy. The dependency court found no evidence of a plan for B. if father had another flashback and no evidence father completed a drug program. The dependency court took custody from the parents and ordered reunification services for father. Monitored visits were ordered and father was ordered to participate in individual counseling, random drug testing, and parenting classes. If he missed or had a dirty test, he must complete a drug program.

## **DISCUSSION**

### **Substantial Evidence Supports the Findings Under Section 300, subdivision (b)**

Father contends substantial evidence does not support the finding under section 300, subdivision (b), that B. was currently at substantial risk of serious physical harm due to father's failure to protect, history of mental and emotional illness, and history of substance abuse. We conclude substantial evidence supports the finding.

In determining whether substantial evidence supports the factual findings, "all intendments are in favor of the judgment and [we] must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court." (*Crogan v. Metz* (1957) 47 Cal.2d 398, 403-404.) "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." [Citations.] (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) "[I]ssues of fact and credibility are the province of the trial court. [Citation.]" (*In re*

*Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.*, *supra*, at p. 321.)

If supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Thus, the pertinent inquiry when a finding is challenged on sufficiency of the evidence grounds is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*Ibid.*)

Section 300, subdivision (b), describes, *inter alia*, a child who has suffered or is at substantial risk of suffering serious physical harm or illness as a result of “the failure or inability of [the] parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness . . . or substance abuse.” “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

The purpose of the juvenile court law is to provide “maximum safety and protection for children” being harmed or who are at risk of harm. (§ 300.2.) “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (*Ibid.*) Marijuana is a hallucinogenic substance. (Health & Saf. Code, § 11054, subd. (d)(13).) “There is a risk to . . . children of the negative effects of secondhand marijuana smoke. [¶] . . . [U]se of marijuana near others can have a negative effect on them.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452.)

The record contains substantial evidence father failed to take action to protect B. when he knew of mother’s substance abuse. The dependency court did not believe father’s testimony that he was unaware mother was using drugs during the pregnancy.

Father knew during his 11-year relationship with mother that mother abused drugs and alcohol. He knew that mother had abused drugs during her pregnancy with their first child. He knew that mother was not rehabilitated. He frequently saw mother during the pregnancy with B. He failed to make efforts to insure mother accessed prenatal care and remain drug- and alcohol-free during the pregnancy. It is reasonable to infer from these facts that father knew of mother's substance abuse and failed to protect the child.

Father acknowledged an extensive drug history. He had a lengthy criminal record involving incarceration for drug-related crimes. It was found in Destiny's case that father abused drugs and had a history of periods of incarceration for possession of drugs, which placed the child at risk of harm. He failed to complete a drug program in Destiny's case and submitted no documentary proof he subsequently completed drug rehabilitation. Even if he completed a program in 2005 as he stated, he used cocaine in late 2005 while caring for Destiny, and he acknowledged he used drugs as recently as 2008. This indicates father was not rehabilitated at the time of the hearing. It is reasonable to infer that father's history of substance abuse, drug-related incarcerations, and lack of rehabilitation created a substantial current risk of harm to B.

Regarding the sustained allegation that father had an unresolved history of mental and emotional problems, there is evidence in the record father was diagnosed with, and received treatment in the past for, bipolar disorder, poly-substance dependence, depression, and post-traumatic stress disorder. In Destiny's case, it was found father's post-traumatic stress disorder created a risk of harm. However, father did not comply with court orders to address his mental health issues and failed to access mental health treatment after 2001. The fact that during flashbacks he believed he was back in combat in Vietnam indicates the flashbacks created a grave risk of harm. During one flashback, he discharged a weapon. Father stated he had not experienced a flashback since 2004 or 2005. However, his failure to access treatment and take medication, and his refusal to believe he needed treatment, indicate the mental and emotional problems were unresolved and thus continued to create a risk of harm.

Accordingly, substantial evidence supports the sustained allegation that father's failure to protect, history of drug abuse and incarceration, and unresolved history of mental and emotional problems created a substantial current risk of serious harm to B. under section 300, subdivision (b).

### **DISPOSITION**

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.